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UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

* Chapter 11

*

* Case No. 19-34054sgj11

*

HIGHLAND CAPITAL MANAGEMENT, L.P.

*

*

Debtor

*

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**JOINDER TO MOTIONS FOR STAY PENDING APPEAL
OF THE COURT'S ORDER CONFIRMING THE
DEBTOR'S FIFTH AMENDED PLAN**

Now into Court, through undersigned counsel, come The Dugaboy Investment Trust and Get Good Trust ("Movers") who hereby submit this *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan* ("Joinder"), and respectfully represent as follows:

Notice of Joinder

1. The Dugaboy Investment Trust and Get Good Trust hereby join and adopt all assertions as stated in the following:

a. *Emergency Motion of the Advisors for Stay Pending Appeal of the Confirmation Order, and Brief in Support thereof* filed on February 28, 2021 (Dkt.

#1955) filed by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.; and

b. *Motion for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan* filed on March 3, 2021 (Dkt. #1967) filed by Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.

(collectively, “Motions for Stay”).

2. Further, to the extent any other parties seek the relief requested in the Motions for Stay subsequent to filing this Joinder, The Dugaboy Investment Trust and Get Good Trust shall support the relief requested in the subsequent filing.

3. In addition to the reasons set forth in the Motions for Stay, Movers believe that a stay is warranted based upon the following:

a. Success on the Merits -

i. The Court, in confirming the Debtor’s Plan, distinguished 5th Circuit case law (*In Re Pacific Lumber*, 584 F.3d 229 (5th Cir 2009) regarding the release and exculpation provisions set forth in the Plan. Movers believe the 5th Circuit’s decision in *Securities and Exchange Commission v. Stanford International Bank, Ltd.*, No. 17-10663 (5th Cir. 2019) (copy attached) is the latest expression by the 5th Circuit that such release and exculpation provisions are not permissible as a matter of law. Judge Jones in *Stanford* stated:

“The prohibition on enjoining unrelated, third party claims without the third parties’ consent does not depend on the Bankruptcy Code, but it is a maxim of law not abrogated by the district court’s equitable power to fashion ancillary relief measures.”

The *Stanford* decision rendered some ten (10) years after *In re Pacific Lumber* reaffirms the 5th Circuit's bright line prohibition concerning release and exculpation provisions and that, notwithstanding the equitable powers of District and Bankruptcy Courts, such provisions are not permissible as a matter of law.

b. Public Policy -

The other issue raised by Movers is the issue relative to the unfair discrimination contained in the Plan. As a policy matter, absent a clear directive by the 5th Circuit that the language in 11 U.S.C. § 1129(b) means something other than prohibiting unfair discrimination, this Court should suspend the effect of the Plan that discriminates against the Class 8 creditors.

WHEREFORE, based upon the foregoing Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan, The Dugaboy Investment Trust and Get Good Trust assert a stay of the Confirmation Order is justified under each of the applicable factors for a stay pending appeal. Therefore, The Dugaboy Investment Trust and Get Good Trust pray that this Court grant a stay of the Confirmation Order with respect to such provisions pending appeal and for all other relief that is just and equitable.

March 4, 2021

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CERTIFICATE OF SERVICE

I, Douglas S. Draper, certify that on March 4, 2021, a copy of the above and foregoing *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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